



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 10320045

Date: JUN. 25, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a limited liability company focused on retail, import/export, and wholesale agricultural products, seeks second preference immigrant classification for the Beneficiary, as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that although the Beneficiary qualified for classification as an individual of exceptional ability, the Petitioner had not established that the Beneficiary is well positioned to advance the proposed endeavor or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

The matter is now before us on appeal. On appeal, the Petitioner mentions additional reasons why it believes the Beneficiary qualifies as an individual of exceptional ability, is well positioned to advance the proposed endeavor, and that it would be beneficial to the U.S. to waive the requirements for a job offer and labor certification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this

classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit

documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,² grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

Initially, it bears mentioning that the Petitioner, a limited liability company, has only one employee, who is the Beneficiary. As such, the Beneficiary has initiated this petition as the owner of her own company. Though the Director determined the Beneficiary to be an individual of exceptional ability, the Petitioner alleges the Director erred in its analysis concerning two of the six criteria within the exceptional ability determination. Specifically, the Petitioner argues that the Beneficiary had a license and professional memberships which the Director did not consider. In our de novo review of the exceptional ability determination as a whole, we conclude that the Petitioner has not established that the Beneficiary is an individual of exceptional ability.

A. Evidentiary Criteria for Exceptional Ability

As discussed below, a review of the record indicates that the Petitioner does not meet at least three of the relevant evidentiary criteria.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)

While the Petitioner submitted a foreign bachelor’s degree certificate from the Department of Agricultural Science at [REDACTED] University, it is unclear what major, concentration, or field of study the Beneficiary engaged in to obtain this degree. The translation of the degree itself contains no indication of a major. The Beneficiary’s résumé indicates that the bachelor’s degree is in agricultural sciences, while a letter of reference within the record states the Beneficiary’s bachelor’s degree is in agronomy.

The record also contains a certificate for a foreign master’s degree in Probability Theory and Mathematical Statistics. The Beneficiary’s résumé describes this as a master’s degree in Probability

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998).

² See also *Poursinav*, USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

Statistics and Finance of Commercial Math. According to the support letter submitted in the initial filing, the Beneficiary holds a master's degree in "probability statistics and Finance of Commercial." Similar to the bachelor's degree, the varying degree titles for the Beneficiary's master's degree make it unclear what degree the Beneficiary actually holds.

We note that the Beneficiary herself has provided English translations for these documents, but has not complied with the regulation at 8 C.F.R. § 103.2(b)(3), which requires, in pertinent part, that the translator certify that the translation is complete and accurate, and that he or she is competent to translate from the foreign language into English. The Beneficiary's résumé states that her level of English is "intermediate," which does not suggest full competency to translate.⁴

The record contains no academic equivalency evaluation for either degree. As the precise degrees the Beneficiary holds remains unclear and the translations do not comply with the regulation, the record does not credibly establish the Beneficiary's academic record. Ascertaining the precise degree(s) held by the Beneficiary is necessary to establish the claimed area of exceptional ability, if any.⁵ Accordingly, the Petitioner has not established that the Beneficiary meets this regulatory criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

In the initial filing, the Petitioner submitted five letters of reference from the following individuals:

1. [redacted] an engineer who does not state how he knows the Beneficiary;
2. [redacted] an academic researcher who cooperated with the Beneficiary in an unknown capacity while the Beneficiary was self-employed;
3. [redacted] an Apple engineer who cooperated with the Beneficiary in an undefined capacity relating to wholesale and retail business and during a time in which the Beneficiary was self-employed;
4. [redacted] an Apple engineer who cooperated with the Beneficiary in an unknown capacity and studied with her;⁶ and
5. [redacted] a senior statistician and former General Director of [redacted]
[redacted] whose leadership the Beneficiary worked under from 1985-1992.

Upon examining this evidence, the Director issued a request for evidence (RFE) which notified the Beneficiary that "no evidence has been submitted relating to this criterion" and that the letters appeared to be from current or former colleagues, as opposed to current or former employers. In its RFE response, the Petitioner submitted the same letters again. Nevertheless, the Director ultimately determined that the Beneficiary had satisfied this criterion.

⁴ We note other irregularities and inconsistencies in the record concerning the Beneficiary's translations of other documents. This undermines the credibility of the translations as a whole.

⁵ The Petitioner's initial support letter states that the Beneficiary has exceptional ability in the field economic analysis and business.

⁶ According to government records, she also appears to be the Beneficiary's daughter.

However, in examining these letters on appeal, we observe that none of the letters establishes that the Beneficiary's experience was full-time. Further, only the author [] appears to know the Beneficiary in an employer-related capacity, as that author claimed that the Beneficiary worked "under my leadership" from 1985-1992. The author does not clearly identify the leadership position held during the time in which the Beneficiary worked under it, nor can we ascertain whether such leadership signifies that the author was the Beneficiary's employer during that time. Even if we consider the author to be a former employer, the time in which the author could conceivably be construed as the Beneficiary's employer would be seven years only, which falls short of the criterion's requirement of ten years. The remainder of the letter lists the Beneficiary's work history but does not establish the author's familiarity with the Beneficiary as her current or former employer. Considering the letters individually and collectively, we conclude that the Petitioner has not established that it meets this regulatory criterion.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)

The Director determined that no evidence had been submitted relating to this criterion. On appeal, the Petitioner contends that the Beneficiary's previous license to operate a retail souvenir shop in [] Italy satisfies this requirement and that although the title of the document does not say "license," the document effectively operated as the Beneficiary's business license. While the document may be a license to own and operate a retail shop and issued by the Chamber of Commerce in [] it is not a professional license that permits entry into a particular profession or occupation. Simply calling something a license does not satisfy the requirements of this criterion. By way of example, a driver's license is called a "license," but would not satisfy this criterion. Similarly, the Beneficiary's license registering her LLC in Nevada is called a "business license," but it is not a professional license satisfying this criterion.

The differences between a license to operate a shop and a professional license for the purposes of exceptional ability are numerous. Primarily, the actions required by the Beneficiary to obtain the license to operate a retail souvenir shop appear to be based on mere registration, attestation, and payment of a fee to the issuing authority, whereas a license to practice a profession normally entails a level of education, expertise, or the attainment of a particular professional competence benchmark. The information in the record does not indicate that the Beneficiary had to comply with a certain level of professional competence in order to be issued a license to operate her retail shop. Rather, the licensure appears to have been perfunctory and issued upon proper application and fee. With or without a U.S. baccalaureate degree or its foreign equivalent, an individual could apply for and be issued a business license to operate a retail shop. Additionally, the license to operate the retail shop ends when the retail shop closes, as indicated in the record, which differentiates it from a professional license that does not necessarily terminate simply because the holder of the license changes jobs or businesses close. Finally, the license to operate a retail shop in [] is limited to [] alone and it does not imply that the Beneficiary may use the license beyond the confines of the local municipality. By contrast, a license that establishes a particular competency in a profession, such as in law, medicine, or engineering, for example, may cut across geographical regions or provide a basis for other authorities to recognize and issue equivalent licenses based on previously-established professional competence. Accordingly, the Petitioner has not established that it meets this regulatory criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

The Petitioner has not submitted evidence for consideration under this criterion. The record includes a statement from the Beneficiary that she “commanded a remuneration . . . a great award of property,” while [redacted] states that the Beneficiary received “a super high salary reward.” These statements are vague and uncorroborated by evidence establishing an actual salary. Therefore, the Petitioner has not satisfied this criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

The Petitioner alleges that the Director erred in not recognizing the Beneficiary’s membership as a senior statistician within the [redacted] Statistical Senior Title Evaluation Committee. This committee has also been translated as the ‘[redacted] Statistical Associations’ in other parts of the record. The Petitioner does not acknowledge or explain the difference. Other documentation within the record states that the Beneficiary “was rated as senior technical title by [redacted] Personnel Bureau and [redacted] Bureau of Statistics as Senior Statistician” and that “[a]ll Senior Statisticians are members of the Statistical Associations.” Even if the varying titles and translations for this association/committee were accepted as credible, we would still need to take note of the fact that the record states that the Beneficiary “used to be a membership [sic] of the [redacted] Statistical Associations” (*italics added*). The Petitioner does not state when the Beneficiary stopped being a member and based on the evidence of record, it cannot be determined whether the Beneficiary was a member of this association/committee at the time of filing the petition.

On appeal, the Petitioner submits evidence that the Beneficiary is a new member of two additional associations. However, we cannot consider any memberships gained after the filing date of the petition as evidence to establish the Petitioner’s eligibility at the time of filing. We acknowledge the Petitioner’s statements on appeal that the Beneficiary has joined the events of Google, Amazon, and WeWork “on Meetup” and has been a member of these associations since 2015, however little evidence was submitted to corroborate these claims. On appeal, the Petitioner submits screenshot printouts suggesting the Beneficiary went to two event “meetups” hosted by Google Developer Group, events which appear to have occurred after the petition filing. Although the printouts suggest the Beneficiary attended the event, neither establishes that the Beneficiary is a Google Developer Group member, and even if a member, the Petitioner submitted no evidence to show how this group relates to the claimed area of exceptional ability. Also on appeal, the Petitioner submits screenshots of an account the Beneficiary registered with the California Association of Standards and Agricultural Professions (CASAP), but the printout does not include any indication of when the account was created or whether the account signifies actual membership in CASAP. Finally, a screenshot of an online membership in the International Association for Agricultural Sustainability states that the Beneficiary’s membership is in “draft” status, does not indicate when the Beneficiary’s status became “draft,” or explain what “draft” status means. Therefore, the Petitioner has not satisfied this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
8 C.F.R. § 204.5(k)(3)(ii)(F)

The Director determined that the Petitioner satisfied this criterion based upon the letters of reference previously submitted. However, upon de novo review, we conclude that the deficiencies in the reference

letters, including a lack of detail and insufficient corroborating evidence, do not support a finding that the Petitioner established eligibility under this criterion. As noted above, the majority of the letters do not clearly describe how the authors know the Beneficiary. Moreover, the Director observed that the letters offer general praise but do not contain specific examples as to how the Beneficiary's work has influenced the field. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. *Id.* See also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

Indeed, the authors reference the Beneficiary's talent and character but do not provide specific examples of achievement or contribution beyond listing the Beneficiary's employment history. Although [REDACTED] stated that the Beneficiary's scientific research made significant contributions to the agricultural production of the county, the record contains little evidence to corroborate such a claim.⁷ Similarly, [REDACTED] and the Petitioner claim that the Beneficiary wrote a large number of agricultural economic analysis reports and articles which were cited by major newspapers and government entities. The record contains little evidence demonstrating the Beneficiary's publications, that they have garnered citations, or how her work has otherwise affected the field as a whole. Much of the Beneficiary's claimed achievement occurred in the 1980s and early 1990s. The letters and other documentation within the record do not suggest achievements or contributions to this industry or field more recently than 1992.

On appeal, the Petitioner alleges that the Director mischaracterized the Beneficiary's award as a local [REDACTED] award when it was in fact a prestigious national award, which won first place under the National Statistics Bureau Rural Sampling Survey Corps and second place under the National Statistical System.⁸ It appears that the Beneficiary won the award for her research and writing of an article, though it is not clear from the record what work went into the research and writing or why it garnered recognition. The Petitioner provided scant corroborating details concerning the award. Moreover, we note several discrepancies in the translation of the award that undermine its credibility. First, the award itself includes a date of "1987" but some translations and references made to the award indicate that the Beneficiary received the award in 1988. The translation submitted within the initial filing states that in 1987 the Beneficiary was awarded an "Honor Certification" and that it was for work performed by a team, while the Beneficiary was the writer. The translation also contains reference to both the National Statistics Bureau and [REDACTED] Rural Sampling Survey Corps as the issuing bodies of the award. The translation provided on appeal characterizes the award as given in [REDACTED] 1988 and that it was "First Prize." The name of the issuing entity changes to "National Statistics Bureau Rural Sampling Survey Corps," which appears to combine the National Statistics Bureau and the [REDACTED] Rural Sampling Survey Corps into one entity. As a whole, the record contains inconsistent information regarding the type of award, what work it was for, when it was awarded, and what entity issued it. We acknowledge the Petitioner's statements that 20,000 people worked at the National Statistics Bureau Rural Sampling Survey Corps at the time of the award, however, this figure does not relate how many individuals competed for the award or how

⁷ The reference to "county" also implies a local influence that is not national in scope, let alone informative of influence outside of the Beneficiary's home country.

⁸ The record contains only one award. It is not apparent from the evidence that the Beneficiary won two awards.

prestigious it was. The Petitioner presented little evidence showing that this award is recognized beyond the presenting institution or indicative of influence on the field as a whole. As the Director noted, the award does not state any specific details about what made the Beneficiary's contribution award-worthy or how she played a leading, critical, or indispensable role. Therefore, the Petitioner has not satisfied this criterion.

Summary

The record does not support the Director's finding that the Petitioner met at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner has not established the Beneficiary's eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As previously outlined, the Petitioner must show that the Beneficiary is either an advanced degree professional or possesses exceptional ability before we reach the question of the national interest waiver. The Petitioner does not claim that the Beneficiary is an advanced degree professional, and as previously discussed, has not shown that the Beneficiary meets regulatory criteria for classification as an individual of exceptional ability.

B. National Interest Waiver

As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot.⁹ The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. However, because the Director addressed the matter and the Petitioner's appeal alleges error in the Director's decision, we briefly discuss the evidence and arguments submitted on appeal.¹⁰

The Petitioner explains that the Beneficiary's award, her [redacted] business license valid from 2004-2015, her former membership in a statisticians' association, along with new membership in additional organizations, all serve as evidence that the Beneficiary is well positioned to advance the proposed endeavor. For the reasons discussed above, the license to operate a retail shop in [redacted] and the Beneficiary's memberships are not sufficient evidence in this matter.¹¹

The Petitioner alleges that the Director mischaracterized the Beneficiary's award as a provincial award rather than a national award, which reduced the Beneficiary's impact in the field to a local level. While we acknowledge that the award is national in scope, the Petitioner presented little evidence showing that this award is recognized beyond the presenting institution or indicative of influence on the field as a whole. Even if the variations in translations of the award had not diminished its credibility, the Director already noted that the award did not state any specific details about what made the Beneficiary's

⁹ Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the arguments regarding the endeavor's substantial merit and national importance. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

¹⁰ After the Petitioner filed this appeal, we received an additional letter of reference from [redacted]. It contains the reasons why [redacted] personally believes the Petitioner's proposed endeavor is of national importance. The letter does not explain how [redacted] knows the Beneficiary or how much he knows about the Petitioner's proposed endeavor.

¹¹ The Beneficiary's license to operate a retail shop in [redacted] ended in 2015, four years prior to filing the petition. For this additional reason, this license has no evidentiary bearing on the proposed endeavor.

contribution award-worthy or how she played a leading, critical, or indispensable role. Finally, this award was given in 1987 or 1988, and the Petitioner offers little evidence of sustained or recent contributions to the field such that it would suggest furtherance of the proposed endeavor.

On appeal, the Petitioner submits a business plan to address the evidentiary discrepancies described in the Director's decision, namely concerning the progress towards the proposed endeavor as well as the interest that potential customers, users, investors, or other relevant entities or individuals have in the endeavor. In review, we conclude that the business plan largely repeats information previously provided. Regarding the limited new information in the plan, the content is theoretical and vague, containing descriptions of ideas with little apparent thought as to how the ideas might be accomplished. For instance, the plan discusses the recruitment of managers and staff, but does not describe where the revenue comes from to pay these new recruits. Parts of the plan include utilizing wasteland for crops, but the plan does not reference where the land is, how it will be purchased or leased, or the infrastructure required to use it. The plan references opening organic plant shops and participating in weekend farmer's markets but contains no information on where specifically the shops and markets will be, how the Petitioner intends to buy or build them, or what the expected revenue will be for them. Without sufficient evidence demonstrating the means or financial support to undertake the numerous proposed projects, the Petitioner has not shown that its plan for future activities renders the Beneficiary well positioned to advance the proposed endeavor. Although the Beneficiary has obtained a driver's license, insurance, and AAA membership, little else has been accomplished. The plan lists some of the Petitioner's tasks towards the proposed endeavor, most of which are "in progress," and it does not include explanations of how much or what progress has been made in those areas. When viewed in the totality, the business plan does not address the evidentiary concerns outlined in the Director's decision.

The Petitioner also asserts that it would be beneficial to waive the job offer and labor certification requirements. The Petitioner states that the proposed endeavor will enrich the community by creating jobs, as well as offering agricultural products that are healthier for people and the environment, however, the business plan did not sufficiently document the Beneficiary's prospective contributions in this area. Although the Petitioner claims that these contributions are urgent and the labor certification would be impracticable, the Petitioner does not sufficiently explain why this is so. Moreover, the Petitioner did not address how the Beneficiary's self-employment would affect U.S. workers. The Petitioner claims that the endeavor will create 1,600+ jobs but has not substantiated this claim with sufficient specific information. In the totality, the Petitioner has not adequately addressed the deficiencies outlined in the Director's decision concerning the benefits of waiving the job offer and labor certification requirements.

III. CONCLUSION

The Petitioner has not demonstrated that the Beneficiary qualifies for classification as an individual of exceptional ability under section 203(b)(2)(A) of the Act. In addition, the Petitioner has not shown that the Petitioner is well positioned to advance the proposed endeavor, nor that a waiver of the job offer requirement would be in the national interest of the United States. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.